

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

CHRISTOPHER WARGO,

Plaintiff and Appellant,

v.

LOS ANGELES COUNTY CIVIL  
SERVICE COMMISSION,

Respondent,

COUNTY OF LOS ANGELES et al.,

Real Parties in Interest and  
Respondents.

B295825

(Los Angeles County  
Super. Ct. No. BS170753)

APPEAL from a judgment of the Superior Court of Los Angeles  
County, Mary H. Strobel, Judge. Affirmed.

Rains Lucia Stern St. Phalle & Silver and Gidian R. Mellk for Plaintiff  
and Appellant.

Collins Collins Muir + Stewart, Tomas A. Guterres and David C. Moore  
for Real Parties in Interest and Respondents, County of Los Angeles, Los  
Angeles County Sheriff's Department and Jim McDonnell, Sheriff.

No appearance for Respondent Los Angeles County Civil Service Commission.

## INTRODUCTION

Deputy Sheriff Christopher Wargo’s employment was terminated by the Los Angeles County Sheriff’s Department (LASD) after Wargo committed five violations of LASD policies, three of which carry termination of employment as a possible disciplinary choice.<sup>1</sup> The facts underlying the violations are undisputed. On an evening when he was scheduled to report for his patrol shift at 11:00 p.m. Wargo attended an event at a bar beforehand. Shortly before his shift was to begin, while feeling inebriated at the bar, Wargo contacted a fellow deputy and convinced him to log Wargo onto an LASD computer system in his patrol car using Wargo’s confidential credentials. Doing so created a false official record that Wargo was performing his shift. Several hours later, Wargo (who described himself as “blackout drunk” at the time), left the bar and drove two miles before crashing into two unoccupied cars. Wargo’s blood alcohol level exceeded twice the legal limit, and he pled no contest to driving under the influence. Meanwhile, during the shift he missed, Wargo was assigned as principal responder for two priority calls involving bear sightings in residential areas. Unbeknownst to his superiors, Wargo was not available to cover the calls, and another deputy handled them. That deputy later cleared the computer in Wargo’s vehicle to make it appear that Wargo had responded.

---

<sup>1</sup> To simplify the discussion, we will refer to respondents and real parties in interest—County of Los Angeles, former LASD Sheriff Jim McDonnell and LASD—collectively, as LASD.

Wargo was relieved of duty and LASD decisionmakers recommended to respondent, Los Angeles County Civil Service Commission (Commission), that he be discharged. Although an administrative hearing officer twice (once after remand from the Commission) found that discipline excessive (and imposed only 30-day suspension), the Commission ultimately agreed termination was appropriate. Wargo appeals from a judgment entered after the trial court denied his petition for writ of administrative mandate challenging the Commission's decision. We conclude that the Commission's decision to terminate Wargo's employment was not an abuse of discretion. Accordingly, we affirm.

## **BACKGROUND**

### *Wargo's Misconduct*

The facts leading to Wargo's termination are not in dispute.

Wargo became an LASD deputy sheriff in 2001. Between 2004 and 2012, his evaluations reflected either outstanding or very good performance. Prior to the incident at issue, Wargo had a few minor disciplinary offenses, none of which involved alcohol. In August 2012, Wargo was assigned as a patrol deputy at LASD's La Crescenta Valley station (station).

Wargo began drinking alcohol in 1995 (at age 14). He knew he had a problem with alcohol but sought no assistance. By 2005, Wargo was drinking so heavily he had become a self-described "blackout drinker."<sup>2</sup> However, it was not until the 2012 incident that led to his discharge that Wargo understood he was an alcoholic.

---

<sup>2</sup> At the administrative hearing, Wargo described a "blackout drinker" as one who drinks to the point his brain shuts down and he cannot remember his actions (in contrast with a "brownout drinker" who typically can recall events).

On August 9, 2012, Wargo knew he was scheduled to report for work for his patrol shift from 11:00 p.m. to 7:00 a.m. Several hours before he was scheduled to report for work, Wargo attended an event at a bar in East Los Angeles. He drove his personal car to the bar and secured his gun in the trunk. Wargo consumed a significant amount of alcohol at the bar, and knew he was inebriated. He eventually drank so much he “blacked out” and was unable to estimate how much alcohol he consumed or when he stopped drinking and could not remember anything he did or said after a certain point.

Not long before he was due to report, Wargo sent a text from the bar to LASD Deputy Ramon Gamez asking him to tell the desk sergeant Wargo was running late. Gamez did so. A few minutes later, still intending to go to work but “feeling the effects” of the alcohol he had consumed, Wargo texted Gamez again and asked him to log Wargo onto the Mobile Digital Terminal (MDT)<sup>3</sup> in his patrol car. Wargo sent Gamez his confidential credentials so Gamez could improperly access Wargo’s MDT. Gamez again complied with Wargo’s request, creating a false record that Wargo reported for duty.

Wargo remained at the bar, continued to drink, and failed to appear for work. Three deputies (including Wargo) were assigned to cover the patrol shift for which Wargo failed to appear. Two calls received during that shift were assigned to Wargo (whom supervisors believed was in the field) as the principal officer, with Gamez as assisting deputy. Each call involved bear

---

<sup>3</sup> MDTs are small computers contained in LASD patrol cars. Among other things, the MDT reflects which deputies are logged in so supervisors know who is available to respond to a call. Deputies log onto the MDT in an assigned vehicle using a confidential password checked against the employee’s number to ensure no unauthorized personnel access the MDT system. The act of logging onto an MDT creates an official LASD record.

sightings in residential areas. Such calls are considered “priority” calls, i.e., emergency calls that require prompt attention from a deputy. Gamez, assigned only to assist Wargo on the calls, handled both calls in Wargo’s absence (but did not see a bear). Wargo acknowledged that his failure to appear for work left the station shorthanded and posed increased risk to fellow deputies and to the public.

Gamez sent multiple texts to Wargo during their shift asking Wargo “where [he was],” but received no response. Later, Gamez saw the MDT flashing in Wargo’s vehicle and realized he had not reported for work. Gamez took it upon himself to clear calls on Wargo’s MDT. When he returned to the station, Gamez informed the watch commander he had complied with Wargo’s request and logged him onto the MDT and had covered for him.

Meanwhile, after asking Gamez to log him onto the MDT, Wargo remained at the bar and continued to drink alcohol for about three hours. At about 1:00 a.m., while admittedly “blackout drunk,” Wargo left the bar driving his personal vehicle. Wargo concedes that driving after drinking alcohol to the point he blacked out was a violation of LASD policy.

On August 10, 2012, at about 1:20 a.m., California Highway Patrol (CHP) officers investigated Wargo for driving under the influence (DUI) after he struck two unoccupied parked cars on Eastern Avenue near Fifth Street in Los Angeles, about two miles southwest of the bar.<sup>4</sup> The CHP conducted field sobriety tests and a preliminary alcohol screening at the scene. Wargo’s field

---

<sup>4</sup> During the internal investigation, Wargo told LASD investigators that, when he left the bar, he headed toward the station (about 18 miles northwest of the bar) to report for work. He later acknowledged he had not been headed in the direction of the station at the time of the collision and was unable to explain why he took that route when he left the bar or why he was in that location.

sobriety and blood alcohol tests revealed multiple signs of intoxication and a blood alcohol content greater than .18 percent. The CHP recovered Wargo's loaded, unsecured firearm from the front passenger seat of his car.<sup>5</sup>

The CHP arrested Wargo for DUI. Tests conducted just before 3:00 a.m. (about 90 minutes after the collision), yielded blood alcohol concentration results of .20 percent and .19 percent. In December 2012, Wargo pled *nolo contendere* to a violation of Vehicle Code section 23152, subdivision (b), which makes it unlawful to drive with for a blood alcohol content of .08 percent or more.

Because Wargo's MDT reflected that he was logged on for duty, no supervisor was aware Wargo had not appeared for his shift until the watch commander received a call from the LASD station, to which the CHP had taken Wargo after his arrest, informing him Wargo was in custody. On August 10, 2012, Wargo was relieved of duty.

### *LASD's Internal Affairs Investigations*

LASD's Internal Affairs Bureau conducted two investigations into the events of August 9-10, 2012.<sup>6</sup> After reviewing the results of those

---

<sup>5</sup> Wargo was unable to explain how or when his loaded weapon, previously secured in his trunk, was moved from his trunk to the inside of his car. As discussed below, Wargo was initially charged with a firearm violation under LASD policies. That charge was ultimately removed from consideration of the appropriate discipline after Wargo successfully argued the LASD violated his due process rights in violation of *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194 (*Skelly*), by failing to provide him full information and evidence regarding this charge in advance of the LASD investigation and hearing.

<sup>6</sup> One investigation focused on Wargo's alcohol-related conduct. The other focused on Wargo's failure to appear for work, his request that Gamez log him onto the MDT, and Gamez's conduct in doing so and clearing Wargo's calls.

investigations, LASD executive officers determined Wargo committed several serious violations of LASD policy. On July 19, 2013, Wargo was advised the LASD intended to discharge him for violating six provisions of the LASD Manual of Policy and Procedures (MPP). Wargo was charged with the following violations:

MPP 3-01/030.10: Obedience to Laws, Regulations and Orders, as it pertains to Vehicle Code section 23152, for Driving Under the Influence. Discipline for violations of this policy subjects an employee to a 20 to 30-day suspension;

MPP 3-01/025.45: Safety of Firearms;<sup>7</sup>

MPP 3-01/030.05: General Behavior/discredit to LASD for off duty intoxication, willful drunk driving resulting in a collision with two parked vehicles, and an inability to exercise reasonable care and/control of a firearm. Violation of this provision will subject an employee to discipline ranging from a reprimand to discharge;<sup>8</sup>

---

<sup>7</sup> LASD's sworn deputies, whether on or off duty, may not carry or handle a firearm if they have consumed "any intoxicating substance [including alcohol] to the point where the [deputy] is unable to or does not exercise reasonable care and/or control of the firearm." A deputy with a blood alcohol level in excess of .08 percent is presumptively unable to exercise reasonable care or control.

<sup>8</sup> "A member shall not act or behave while on or off duty in such a manner as to bring discredit upon himself or the [LASD].

"Members' arrests and/or referrals for prosecution are an embarrassment to the [LASD] and bring discredit upon the member and the [LASD] regardless of whether a criminal case is filed and/or ultimately results in a conviction or plea agreement.

"Members who are publicly intoxicated to the extent their recollection about an allegation of misconduct is affected have brought discredit upon themselves and/or the [LASD]."

MPP 3-01/050.50: Unexcused absence. Violation of this provision will result in a suspension of up to 10 days;

MPP 3-01/100.35: Creation of false official records. Violation of this provision subjects an employee from discipline ranging from a reprimand to discharge; and

MPP 3-01/000.10: Lack of Professional Conduct, for disobedience of laws, creation of a false record, and absence without leave which created a hazard to Wargo and the public. Violation of this provision may subject an employee to discipline ranging from a reprimand to discharge.

Generally speaking, LASD Guidelines for Discipline and Education-Based Alternatives (Guidelines) provide for suspension, education and treatment for alcohol-related offenses. However, on occasions when “multiple offenses, that are separate and distinct violations, occur within a single incident,” related to alcohol or not, such “[m]ultiple acts of misconduct may result in discharge even though the ‘standard range’ of discipline for the individual acts does not include discharge. Such ‘multiple acts’ may occur during a single continuing event, contiguous events, or may result from additional misconduct . . . . In such cases, managers should consider the totality of the circumstances when making their [disciplinary] decisions.” In addition, as noted above, three policy violations committed by Wargo—General Behavior/discredit to LASD (MPP 3-01/030.05), Creation of false official records (MPP 3-01/100.35), and Professional Conduct (MPP 3-01/000.10)—may themselves warrant immediate discharge, if the employee’s misconduct is either not correctable through discipline or immediately renders the individual unsuitable for continued employment. In such cases, the Guidelines do not require LASD to impose a lesser discipline before



discharge.<sup>9</sup> The “ultimate decision on the determination of discipline rests with [LASD] executives.”

Wargo requested and received a “*Skelly* hearing.”<sup>10</sup> On August 9, 2013, LASD advised Wargo he would be discharged for the MPP violations.

### *Wargo’s Appeal to the Commission*

Wargo appealed LASD’s disciplinary decision. Following a four-day hearing between November 2014 and July 2015, an administrative hearing officer (hearing officer) issued factual findings and legal conclusions, sustaining five of six charges against Wargo. As to the “Safety of Firearms” charge, the hearing officer concluded LASD violated Wargo’s due process rights under *Skelly* and failed to satisfy its burden of proof on that count. The hearing officer also determined that discharge was too severe a discipline for the five sustained policy infractions and recommended a 30-day suspension.

---

<sup>9</sup> The Guidelines provide that, “[t]here are some acts of misconduct, which by their nature, are not appropriate for progressive discipline. These are conduct problems which the employee should have reasonably known to be unacceptable, without specific notice from the [LASD] . . . . [¶] Such behavior may include, but is not limited to, . . . dishonesty, . . . or behavior which is illegal or places the individual . . . in violation of . . . state or local laws . . . . [¶] These acts may result in relatively harsh discipline, *even discharge, without the use of progressive discipline.*” (Italics added.)

<sup>10</sup> A *Skelly* hearing provides an opportunity for an employee subjected to major discipline to challenge the discipline. Here, the hearing officer ultimately agreed with Wargo that, because his *Skelly* rights were violated, the firearm charge should not be sustained. LASD failed to advise Wargo in advance of or during his investigative interview of the firearm charge that it had evidence from the CHP officers who arrested Wargo regarding the loaded firearm found inside his car.

LASD filed objections with the Commission to the hearing officer's proposed decision and recommendations. LASD argued the hearing officer failed to consider that LASD disciplinary guidelines permit the immediate discharge if the misconduct committed by the employee is deemed either not correctable, or immediately renders the individual unsuitable for continued employment.

As LASD pointed out, at the administrative hearing, LASD's "decisionmaker," Commander Goran, testified he had considered the evidentiary record and Wargo's performance and disciplinary record.<sup>11</sup> He determined that, considered collectively, Wargo's actions rendered him unsuitable for continued employment. Commander Goran emphasized that his disciplinary decision was not driven solely by the firearm charge or the role played by alcohol in Wargo's policy violations. Rather, he concluded that Wargo made a series of bad decisions that demonstrated him unsuitable for continued employment as a Deputy Sheriff. Besides becoming severely intoxicated before work and crashing his car in into other cars, he tried to cover-up his misconduct. He enlisted Gamez to create a false record by logging Wargo onto the MDT, and he gave Gamez confidential information to commit the fraud. Also, by failing to appear for work (or reporting his absence), Wargo left the station shorthanded, and placed the public and fellow deputies at risk.

Commander Goren also considered Wargo's performance and disciplinary record, his cooperation with the CHP, his remorse about what he had done, and steps he had taken to address his problems with alcohol.

---

<sup>11</sup> At the time he testified, Commander Goran had been with LASD for over three decades and had been involved in hundreds of disciplinary considerations.

Notwithstanding these mitigating factors, Commander Goran determined that some behavior by law enforcement officers intolerably “crosses a line,” even where that behavior may be “correctable,” which was just one factor to consider. Commander Goran and other supervisors with whom he consulted agreed that Wargo’s policy violations were so egregious that they immediately rendered him unsuitable for continued employment.

In light of LASD’s objections, the Commission remanded the matter for the hearing officer to clarify her factual findings regarding the disciplinary recommendation. On June 29, 2016, the hearing officer issued a “Remanded Decision. Findings of Fact, Conclusions of Law and Recommendation.” The hearing officer reiterated her earlier principal conclusions, i.e., that LASD had established that five of six charges against Wargo were founded, and also again recommended a 30-day suspension as the appropriate discipline.

To justify her findings and conclusions, the hearing officer relied on the following considerations. First, she stated that Commander Goran placed great weight on the fact that Wargo did not know the location of his unsecured loaded gun at the time of his arrest. However, although the hearing officer found LASD had established this charge, she concluded that, in light of the *Skelly* violation, the firearm charge could not be used to justify discipline. The hearing officer gave minimal weight to the significance of Wargo’s other acts of misconduct, including driving under the influence causing an accident, enlisting a fellow deputy to create a false record indicating Wargo was on duty when he was not, leaving his station shorthanded, and not responding to two calls of bear sightings. The hearing officer characterized these acts as having emanated from Wargo’s alcoholism, and concluded (apparently despite the serious circumstances of Wargo’s driving under the influence while “blackout drunk” and striking two parked

cars, and despite his leaving the station short-handed without notice) that the conduct had not put the public or fellow deputies at risk. She was not convinced by LASD's claim that no lesser discipline could correct Wargo misconduct. In support of her conclusion, the hearing officer noted Wargo had not previously engaged in what she characterized as alcohol-related misconduct. Further, she observed that, whereas Wargo's actions could have placed Gamez at risk had he encountered a bear, Gamez had no obligation to respond to the calls or to cover for Wargo, and Wargo had not asked him to do so. The hearing officer implicitly opined that Gamez's lapse in judgment by covering for Wargo was improperly used to justify Wargo's discharge.

As factors in mitigation, the hearing officer observed that Wargo was remorseful, and he accepted responsibility for his actions.<sup>12</sup> He had been cooperative with the CHP, and was a "solid deputy" whose evaluations in the seven years preceding this incident reflected outstanding or very good performance. Finally, after the incident, Wargo promptly took remedial steps to address his alcoholism and had been sober for three years by the time of the hearing. The hearing officer concluded in light of Commander Goran's reliance on the firearm charge (which was not sustained), and because the misconduct involved was Wargo's first alcohol-related misconduct, discharge was too harsh. A 30-day suspension was a more appropriate discipline.

---

<sup>12</sup> At the administrative hearing, Wargo initially refused to accept responsibility for the fact that Gamez covered for him by clearing his MDT, because Wargo did not ask Gamez to do so. Eventually, Wargo acknowledged he had implicated Gamez, and he bore responsibility for Gamez's actions in covering Wargo's calls and clearing Wargo's MDT. Wargo conceded that if he had not asked Gamez to log him onto the MDT, no calls would have been assigned to him and there would have been no need for Gamez either to cover the priority calls for Wargo or clear his MDT.

LASD again objected to the hearing officer's proposed decision. LASD observed that several "facts" on which the hearing officer relied to support her conclusions were contradicted by her findings. For example, the hearing officer claimed Commander Goran's decision relied heavily on the firearm charge, but the record reflected otherwise. She also incorrectly found Commander Goran had attributed Gamez's own judgment lapses entirely to Wargo and ignored the fact that Commander Goran testified he gave substantial consideration to other factors, including the fact that Wargo committed multiple MPP violations, and the severity of those violations. LASD also took issue with the hearing officer's conclusion on the *Skelly* issue, and insisted her disciplinary recommendation was premised on the wrong legal standard. LASD maintained Commander Goran was justified in concluding Wargo's behavior "crosse[d] a line" and could not be tolerated, even if the conduct was "correctable."

On January 11, 2017, following argument by both sides, the Commission sustained LASD's objections and upheld its decision to discharge Wargo. The Commission accepted the hearing officer's factual findings sustaining the charges (other than the firearm charge), but rejected the hearing officer's disciplinary recommendation, concluding instead that the serious nature of the five sustained violations warranted termination.

### *Wargo's Writ Petition*

In October 2017, Wargo filed the operative amended petition seeking a writ of administrative mandate. After reviewing the administrative record and the parties' briefs, the trial court issued a tentative decision denying the petition. Following oral argument, the court acknowledged the existence of mitigating factors and that the Commission could have reached a different

conclusion as to the *Skelly* issue. But the trial court observed, “that’s not the standard. The standard is was it an abuse of discretion. And on this record, I cannot find [the decision] was an abuse of [the Commission’s] discretion.” The court denied the petition and entered judgment in favor of LASD.

## DISCUSSION

Wargo contends the trial court erred in denying his petition because discharge constituted excessive discipline under the MPP and the circumstances at issue. We find that the decision to discharge Wargo was not an abuse of discretion.

Whether a sanction imposed by an administrative agency was proper is a matter resting in the sound discretion of that agency, and its decision will not be overturned absent a showing of an abuse of discretion. (*Hanna v. Dental Bd. of California* (2012) 212 Cal.App.4th 759, 764 (*Hanna*).) In reviewing an issue regarding the propriety of administrative discipline imposed, the appellate court employs the same “abuse of discretion” standard as the trial court. (*County of Los Angeles v. Civil Service Com. of County of Los Angeles* (2019) 40 Cal.App.5th 871, 878; *Hanna, supra*, 212 Cal.App.4th at p. 764 [an appellate court will not disturb an administrative agency’s exercise of discretion regarding whether a proper discipline was imposed absent a showing of a manifest abuse of discretion]; Code Civ. Proc., § 1094.5, subd. (b).) Like the trial court, we afford significant deference to an administrative agency’s expertise regarding the propriety of punishment to impose and may not substitute our discretion for the agency’s. (*Hanna, supra*, 212 Cal.App.4th at p. 764.) The law affords a “strong presumption of correctness concerning the administrative findings,” and the appellant bears the burden to demonstrate that the findings with which he takes issue are

against the weight of evidence. (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 817; see *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 [judgments are presumed correct, and appellants have the affirmative obligation to demonstrate error].) We indulge all presumptions and intendments in favor of supporting the judgment on issues as to which the record is silent. (*Denham, supra*, 2 Cal.3d at p. 564.)

“In considering whether an abuse of discretion occurred in the discipline of a public employee, the overriding consideration is the extent to which the employee’s conduct resulted in, or if repeated is likely to result in, harm to the public service. Other factors include the circumstances surrounding the misconduct and the likelihood of its recurrence.” (*Cate v. State Personnel Bd.* (2012) 204 Cal.App.4th 270, 284–285 [“[i]n weighing such factors, the court considers the nature of the employee’s profession, ‘since some occupations such as law enforcement, carry responsibilities and limitations on personal freedom not imposed on those in other fields’”]; see *Skelly, supra*, 15 Cal.3d at p. 218.)

Wargo acknowledges that administrative agencies are vested with broad discretion regarding the imposition of discipline on employees (*Skelly, supra*, 15 Cal.3d at p. 217), and also that the agency’s discretion is not limited by its “disciplinary guidelines.” Further, he takes no issue with pertinent facts. The principal dispute is whether the trial court erroneously found the Commission appropriately exercised its discretion in imposing what Wargo contends is the excessively harsh discipline of discharge.

Wargo argues that, apart from asking Gamez to log him into the MDT (thereby creating a false LASD record), his other misconduct fell “within the penumbra of DUI with collision, conduct for which [LASD’s policies] do not recommend discharge.” He insists LASD failed to acknowledge that his

policy violations were driven by his disease (alcoholism), which he has now addressed (he was sober for the four years prior to the Commission hearing), making his violations unlikely to be repeated. He contends that no violation on its own warranted discharge, and that LASD aggregated “redundant umbrella policy violations” in order successfully to assert that, considered in their totality, the violations warranted the severe penalty of discharge. He asserts that in doing so, LASD ignored his previously outstanding record and an absence of discipline for similar misconduct.

Wargo’s assertion that the Commission, in essence, punished him for being an alcoholic, is premised largely on a stray comment made by one of the five commissioners during his counsel’s argument before the Commission.<sup>13</sup> That commissioner (who is unidentified) interjected at one point, “once an alcoholic,” apparently referring to alcoholism as a continuing disease. Wargo argues that this comment demonstrates that the Commission terminated him, in essence, for being an alcoholic.

But a review of the entire record of the Commission hearing shows that this comment, made in the context of the commissioners’ collective disbelief that a 30-day suspension was a sufficient penalty in light of the seriousness of five founded charges, did not betray an insensitivity to Wargo’s condition or an intent to punish him for being an alcoholic. As another commissioner stated, this was “not an easy case.” That commissioner also observed that Wargo should be “commend[ed] for his sobriety” and 13 years of performance. However, the Commission had “to look at what happened that day.” Leaving the firearm charge aside, the five-member Commission concluded that Wargo’s misconduct on the day in question was sufficiently egregious to

---

<sup>13</sup> There is no transcript of the Commission hearing. We have been provided with the audio recording, which we have reviewed.



warrant a decision sustaining LASD's objections to the hearing officer's conclusions, and to approve the discharge. That decision was not an abuse of discretion.

Wargo invites this court to reweigh the evidence before the Commission and place the same weight on the facts as the hearing officer did in recommending a 30-day suspension. Of course, under the appropriate standard of review, we do not perform that function. Rather, we determine solely whether the Commission abused its discretion when it rejected the hearing officer's recommendation, and chose instead to impose a disciplinary discharge, discipline well within the guidelines for three of the proved charges. The evidence of those three violations, alone or considered collectively and in context, clearly supports the Commission's decision. In brief, Wargo got drunk at a bar before he was scheduled to appear for work, and improperly enlisted another deputy to lie for him by using Wargo's confidential credentials to log him onto the MDT to make it look like Wargo reported for his shift. Because he failed to report for work (or report his absence), Wargo left the station unknowingly shorthanded in responding to two calls that posed potential hazards. Instead, Wargo stayed at a bar and drank so much alcohol he blacked out. Then, completely inebriated, Wargo drove his car about two miles before crashing into (fortuitously) unoccupied vehicles. In short, regardless of the hearing officer's downplaying the significance of this misconduct as largely a product of Wargo's alcoholism, a condition that was no longer active in the sense that he was now sober, the Commission was certainly entitled to view it as sufficiently egregious to demonstrate that Wargo should be terminated. (See *County of Siskiyou v. State Personnel Bd.* (2010) 188 Cal.App.4th 1606, 1615 [“[t]he public is

entitled to protection from unprofessional employees whose conduct places people at risk of injury and the government at risk of incurring liability”].)

None of the authorities on which Wargo relies hold that a comparable penalty under similarly undisputed circumstances was an abuse of discretion. Wargo’s reliance on the guidelines for progressive discipline is misplaced. LASD policies permit immediate discharge as an initial discipline in certain circumstances, including three of the policy violations here. The seriousness of those violations justified termination. “A deputy sheriff’s job is a position of trust and the public has a right to the highest standard of behavior from those they invest with the power and authority of a law enforcement officer. Honesty, credibility and temperament are crucial to the proper performance of an officer’s duties. Dishonesty is incompatible with the public trust. Abuse of power cannot be tolerated.” (*Talmo v. Civil Service Com.* (1991) 231 Cal.App.3d 210, 231; see *Kolender v. San Diego County Civil Service Com.* (2005) 132 Cal.App.4th 716, 721 [reversing a civil service commission’s decision to reduce the discipline of a deputy who lied to cover up another deputy’s abuse of an inmate because “[d]ishonesty is not an isolated act; it is more a continuing trait of character”].)

### *The Commission Satisfied Topanga’s Requirements*

Wargo also contends a disciplinary discharge was an abuse of discretion because the Commission failed to satisfy its obligation under *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506 (*Topanga*). *Topanga* held that “implicit in section 1094.5 is a requirement that the agency which renders the challenged decision must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order.” (*Id.* at p. 515.) Wargo maintains the Commission did not satisfy this

requirement because it failed to provide a reasoned progression from the factual findings to “justify the penalty imposed, including ‘a statement of the factual and legal basis of the decision.’” (*Oduyale v. California State Board of Pharmacy* (2019) 41 Cal.App.5th 101, 113.)

We disagree. The Commission’s findings satisfy *Topanga*. The purpose of “bridg[ing] the analytic gap” is to “enable the parties to the agency proceeding to determine whether and on what basis they should seek review.” (*Topanga, supra*, 11 Cal.3d at pp. 515 & 517.) As the Supreme Court has explained, “mere conclusory findings without reference to the record are inadequate.” (*Environmental Protection Information Center v. California Dept. of Forestry & Fire Protection* (2008) 44 Cal.4th 459, 517.) However, to satisfy *Topanga*, “[t]he findings do not need to be extensive or detailed. “[W]here reference to the administrative record informs the parties and reviewing courts of the theory upon which an agency has arrived at its ultimate finding and decision it has long been recognized that the decision should be upheld if the agency ‘in truth found those facts which as a matter of law are essential to sustain its . . . [decision].’” [Citation.]” (*Id.* at pp. 516–517; see *McMillan v. American Gen. Fin. Corp.* (1976) 60 Cal.App.3d 175, 183 (*McMillan*).) Moreover, established law requires that an administrative agency’s conclusion “be liberally construed to support rather than defeat the decision under review.” (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1989) 214 Cal.App.3d 1348, 1356.) In determining whether an agency’s reasoning process enjoys sufficient evidentiary support, we review the entire record, focusing on the substance not the form of the administrative action in question. (See *Sierra Club v. California Coastal Com.* (1993) 19 Cal.App.4th 547, 557; *McMillan, supra*, 60 Cal.App.3d at p. 184.)

Here, the Commission's conclusions, considered in the context of the language of the decision, statements by individual members of the Commission at the January 2017 proceeding, and the record as a whole (including two sets of extensive findings and conclusions by the hearing officer), sufficiently bridged the analytical gap under *Topanga*, leaving little room to question the theory on which the Commission based its decision.

First, the Commission's decision observes that LASD met its burden as to five of six charges. The decision refers to Wargo's proven conduct in connection with five founded charges, which includes undisputed evidence establishing that: (1) shortly before his work shift, Wargo ingested enough alcohol to cause him to be "blackout drunk"; (2) while dangerously intoxicated, Wargo drove his car and collided into other vehicles; (3) Wargo persuaded Gamez improperly to log him onto the MDT, creating a false record that made it appear Wargo was present for and performed his shift; (4) Wargo was arrested and prosecuted for driving while intoxicated; and (5) Wargo did not in fact appear for work, thereby leaving the station short-handed and leaving Gamez to handle two emergency calls assigned to Wargo. Wargo's undisputed conduct, considered in conjunction with the Commission's reference to the founded charges, adequately bridges the analytical gap to explain the Commission's determination that Wargo's misconduct as to at least three of five founded violations was sufficiently egregious to warrant discharge.

Second, the commissioners' discussion at the January 2017 meeting before voting on facts and circumstances further "bridged the analytical gap" by confirming that the Commission's decision was based on a totality of the circumstances and Wargo's conduct. As one commissioner stated, based on "what I read, *the totality*, I can't get to the hearing officer's recommendation.

I appreciate that [Wargo has] rehabilitated himself, but these are serious violations.” (Italics added.)

That commissioner also expressed grave concern that Wargo’s misconduct, again considered in its totality, posed “potential liability to the county.” We reject Wargo’s assertion that this reference to “potential liability” means the Commission’s decision was based on Wargo’s alcoholism. The Commission was entitled to reject the notion (apparently accepted by the hearing officer) that Wargo’s bad judgment was mitigated as being solely attributable his alcoholism, and that to terminate him equated to terminating him for being an alcoholic. To the contrary, the Commission could properly conclude that Wargo’s dangerous misconduct on the night in question raised a specter of potential civil liability for LASD. Indeed, as another commission member observed, the Commission was required “to look at what happened that day.” And, as LASD argued, the public harm could have been great and the county could have faced significant financial exposure arising from two “emergency” calls regarding bear sightings that (unbeknownst to his superiors) Wargo was not available to cover, instead using Gamez to make it appear Wargo was on patrol when he was not. Wargo’s policy violations with respect to the unexcused absence and use of Gamez to create a false record were not immaterial. These actions left LASD (unknowingly) shorthanded under potentially dangerous circumstances, thus increasing the risk of harm to LASD personnel and the citizens whom Wargo was charged with protecting.

In conclusion, the record contains ample evidence demonstrating the trial court did not err in upholding the Commission’s discretionary decision to discharge Wargo, whose policy violations extended well beyond mere alcohol-related offenses.

**DISPOSITION**

The judgment is affirmed.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

WILLHITE, J.

We concur:

MANELLA, P. J.

CURREY, J.